



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: O. V. Campbell & Sons Industries, Inc.

File: B-229555

Date: March 14, 1988

DIGEST

A bid cannot be rejected as nonresponsive on the basis that a surety's affidavit, which accompanied the bid bond, omitted information concerning the surety's outstanding surety obligations on other contracts and contained a photocopied signature in the "Certificate of Sufficiency" provision of the affidavit. Responsiveness is determined at bid opening, and if the bid bond as submitted is proper on its face, the bid is responsive. The matter instead is one of responsibility, and the acceptability of the surety may be established any time before award.

DECISION

O. V. Campbell & Sons Industries, Inc., has protested the rejection of its low bid under invitation for bids (IFB) No. F08621-87-B-0096, for repairs to roofs of military housing units on Homestead Air Force Base, Florida.

We sustain the protest.

The IFB required bids to be accompanied by a bid bond (Standard Form (SF) 24) in the amount of 20 percent of the bid price or \$3 million, whichever was the lesser. Since Campbell was bonded by individual sureties (as opposed to a corporate surety), Campbell was required to submit a completed Affidavit of Individual Surety (SF 28) for each of the two required individual sureties. Item 10 of this affidavit required an individual surety to disclose all other bonds on which the individual was obligated at the time the bid bond was executed for Campbell or to state "none" if no such obligations existed. On the reverse of SF 28 was a "Certificate of Sufficiency" provision which was to be signed by an appropriate certifying individual who was to attest to the facts stated by the surety in the affidavit.

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Campbell's bid was the lower of the two bids received. The Air Force has provided us with the original SF 24 and SF 28's submitted by Campbell. Campbell's SF 24 was regular in all respects. Although Campbell's sureties also submitted completed SF 28's, each of which showed ample net worth statements to cover the required penal amounts, the Air Force noted that the SF 28's contained 2 irregularities: both individual sureties left Item 10 blank and neither SF 28 contained an original signature by the appropriate certifying individual but rather a photocopied signature only.

On being informed by the Air Force of these irregularities, Campbell asked if it "could submit new bonds or correct." While the Air Force denied this request, it says "additional information was requested on [Campbell's] sureties." The Air Force says that, rather than answering its questions, the new information which Campbell supplied still did not show, in the Air Force's view, whether either surety "had committed all alleged assets for other contracts." The record does not show, however, that the Air Force's contracting officer ever formally determined Campbell's sureties to be nonresponsive based on this information.

Indeed, in its report to us, the Air Force insists that Campbell's bid was nonresponsive because of the deficiencies in the SF 28's submitted by Campbell and that the Air Force considers it unnecessary to discuss the question of responsibility. However, the Air Force notes that the question of the "responsibility of the sureties [will] have to be resolved if Campbell's bid is found to be responsive."

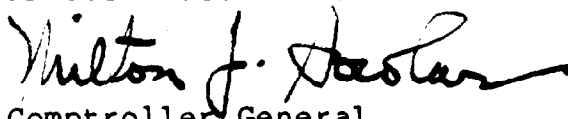
The test applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform without exception the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the invitation's material terms and conditions. 49 Comp. Gen. 533, 556 (1970). The purpose of an SF 24 is to secure the liability of a surety to the government in the event that the bidder fails to fulfill its obligation to execute a written contract and to provide payment and performance bonds. The sufficiency of an SF 24 depends on whether a surety is clearly bound by its terms. When the liability of the surety is not clear, the SF 24 properly may be regarded as defective, and the bid rejected as nonresponsive. Imperial Maintenance, Inc., B-224257, Jan. 8, 1987, 87-1 CPD ¶ 34. A completed SF 24 is proper "on its face" when it has been duly executed by two individual sureties (whose affidavits indicate that, subject to further investigation, they both have net worths at least equal to the penal amount of the bond), and the completed

SF 24 contains no obvious facial defects, such as the omission of the penal amount, or the markup or alteration of the bond without evidence of surety approval. Transcontinental Enterprises, Inc., B-225802, July 1, 1987, 66 Comp. Gen. ___, 87-2 CPD ¶ 3; Argus Services, Inc., B-226164, Apr. 21, 1987, 87-1 CPD ¶ 429.

As noted above, Campbell's completed SF 24 was responsive in all respects, and its sureties' SF 28's showed the required financial net worth. Campbell's bid was rejected as nonresponsive because of deficiencies in its SF 28's. An SF 28, however, is a document separate from the SF 24 and serves solely as an aid in determining the responsibility of an individual surety. River Equipment Company, Inc., B-227066, July 24, 1987, 87-2 CPD ¶ 84 at page 3; Hispanic Maintenance Service, B-218199, Apr. 22, 1985, 85-1 CPD ¶ 461; Consolidated Services, Inc., B-206413.3, Feb. 28, 1983, 83-1 CPD ¶ 192; Jets Inc., B-194017, Apr. 16, 1979, 79-1 CPD ¶ 269; 52 Comp. Gen. 184 (1972). Consequently, the Air Force erred in determining that Campbell's bid was nonresponsive because of the failures of Campbell's sureties to complete Item 10 of SF 28 or to have original signatures in the "Certificate of Sufficiency" portion of SF 28.

Consequently, the Air Force's contracting officer should, in accordance with the mandate in Federal Acquisition Regulation § 28.202-2(a), "determine the acceptability of individuals proposed as sureties." Further, as noted in Transcontinental Enterprises, Inc., supra at page 4, "there is nothing to prevent the contracting officer from going beyond the SF 28 information where necessary" to determine the responsibility of the proposed sureties, who in this case submitted supplemental information at the Air Forces's request after bid opening.

Protest sustained.

for 
Comptroller General
of the United States